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House Bill _____
By _____

Senate No. SB0632
By Ford

B.C. / E.&C.D. (2)

AN ACT to amend Tennessee Code Annotated, Title 4, relative to creating a Minority Business Development Guarantee and Revolving Loan Fund.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, is amended by adding Sections 2 through 19, inclusive, of this act as a new chapter.

SECTION 2. There is hereby created an authority which shall be known as the "Tennessee Minority Business Development Guarantee and Revolving Loan Fund," hereinafter referred to as the "authority".

SECTION 3. (a) The authority shall be a body, politic and corporate, and a quasi-public instrumentality which shall be deemed to be acting in all respects for the benefit of the people of the state in the performance of essential public functions and shall be deemed to be serving a public purpose and improving and otherwise promoting their health, welfare and prosperity through the creation of jobs and child care slots.

(b) The authority shall be empowered to act on behalf of the state of Tennessee and its people in serving this public purpose for the benefit of the general public.

(c) The authority shall have perpetual succession and shall adopt, amend and repeal bylaws and regulations for the conduct of its affairs.

SECTION 4.

(a) The authority shall be governed and its corporate powers exercised by or under the direction of a board of directors, which shall consist of the governor, or the governor's designee, the commissioner of economic and community development, or the commissioner's designee, the state treasurer or the treasurer's designee, the comptroller of the treasury or the comptroller's designee, three (3) appointed directors, one (1) of whom shall be appointed by the governor to represent Tennessee business and industry at large, one (1) of whom shall be appointed by the governor to represent the minority business community in Tennessee, and one (1) of whom shall be appointed by the governor from a slate nominated from the financial industry by the commissioner of economic and community development.

(b) On or before July 1, 1995, the governor shall appoint the directors who shall serve as follows: the director nominated by the commissioner of economic and community development shall be appointed for an initial term of two (2) years. Thereafter, appointments of members nominated by such commissioner shall be for four (4) years. The director appointed by the governor to represent Tennessee business and industry at large shall be appointed for an initial term of three (3) years and thereafter appointments of such director shall be for four (4) years. The other two (2) appointed members shall also serve regular terms of four (4) years.

(c) Any person appointed to fill a vacancy in the office of a member of the board shall be appointed in a like manner and shall serve for only the unexpired term of such member. Any member shall be eligible for reappointment. Members shall serve until their successors are appointed. Any member may be removed from such member's appointment by the governor for cause.

(d) The governor shall from time to time designate a member of the board as its chairperson. The state treasurer shall be the treasurer of the authority. The treasurer shall be custodian of all assets of the authority. The board may elect such other officers as it may require.

(e) Five (5) of the directors of the authority shall constitute a quorum, and the affirmative vote of five (5) directors shall be necessary for any action to be taken by the board.

(f)

(1) The members of the board shall serve without compensation, but each member shall be entitled to reimbursement for reasonable expenses incurred in the performance of official duties.

(2) All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(g) The board may employ an executive director and delegate to the executive director such responsibilities as it may consider appropriate and may also employ other personnel as may be required to carry out the purposes of this chapter.

(h) The authority is hereby authorized and empowered to expend for the necessary administration of the provisions of this chapter any funds appropriated, received or allocated for the purposes of this chapter.

(i)

(1) No member or employee of the authority, during his tenure or for six (6) months thereafter, shall be employed by, hold any paid official relation to, or have any financial interest in any enterprise for which the authority has guaranteed a loan.

(2) If any member or employee of the authority shall have a direct or indirect interest in any other business or contract with the authority other than

those described in subdivision (i)(1), or shall have an ownership interest in any firm, corporation, or other entity having an interest in any business or contracts with the authority other than those described in subdivision (i)(1), such interest shall be disclosed in writing and set forth in the official minutes of the authority, and such member or employee shall refrain from participation in any discussion or activity by the authority in connection with such business or contract.

(3) If any member or employee fails to comply with the foregoing provisions, such member or employee may, after proper notification and opportunity to be heard, be disqualified from membership with or employment by the authority by a majority vote of the board of directors and may not be reappointed to or reemployed by the authority.

(4) In no event shall any failure to comply with this section affect the validity of any contract or obligation made by the authority under this chapter.

SECTION 5.

(a) The purpose of the authority shall be to assist in the start-up, expansion, improvement or continued operation of minority-owned businesses in rural areas through the guaranteeing of loans from the private sector; and through direct issuance of loans at a rate of interest determined by the board; and thereby to promote economic development and to increase employment in Tennessee. For this purpose, the authority shall have the power to:

(1) Have perpetual succession as a body corporate and adopt bylaws, rules, regulations, policies and procedures for the regulation of its affairs and conduct of its business;

(2) Adopt an official seal;

(3) Receive state funds for the purpose of guaranteeing loans, directly issuing loans, and making grants for development of minority-owned businesses in rural areas;

(4) Administer the programs established under this chapter;

(5) Enter into contracts, agreements and other transactions and execute all instruments necessary or convenient to carry out its business;

(6) Apply for and accept grants and contributions from any source of money, property, labor or other things of value, to be held, used and applied for the purposes of this chapter;

(7) Provide and pay for such advisory services and technical assistance and to engage consultants and appraisers as may be necessary or desirable to carry out the purposes of this chapter; and

(8) Exercise such other powers necessary to carry out its purposes and exercise the powers expressly granted in this chapter.

The exercise of the foregoing powers shall be in conformance with all other applicable provisions of the law.

(b) For the purpose of this section and chapter “minority-owned business” has the meaning it is given in Tennessee Code Annotated, Section 12-3-802(3).

SECTION 6.

(a) The chair of the board shall make and deliver to the governor and the commissioner of finance and administration on or before November 1, 1995, and each year thereafter, a certificate stating the amount, if any, estimated to be required for payment of or provision for expenses of the authority and for maintaining the minority business development revolving loan fund level at three million dollars (\$3,000,000) under this chapter for the next ensuing state fiscal year. The amount so stated for any such ensuing state fiscal year shall be the sum of the amounts, if any, estimated for such fiscal year, by which anticipated operating expenses will exceed available operating and other revenues that the authority anticipates with reasonable certainty it will receive during such fiscal year, plus the amount needed to maintain the fund at three million dollars (\$3,000,000). To assure the continued operation and solvency of the authority for the fulfillment of the purposes of this chapter, there shall be apportioned and paid to

the agency after audit by the appropriate state officials on vouchers certified or approved by the officer or officers authorized by the authority, not more than the amount so stated for expenses of the authority and for maintaining the level of the fund for such fiscal year. All such payments shall be subject to the appropriation of such amounts by the general assembly and shall be subject to a determination by the commissioner of finance and administration that such appropriated amounts are available.

(b) The commissioner of economic and community development is directed to apply for any appropriate source of federal funds, including, but not limited to, community development block grant funds, which might be utilized for the loan fund.

(c) As used in this section:

(1) "Available operating revenues" for the fiscal year means all fees charged by the authority, if any, and income or interest earned or added to funds of the authority due to the investment thereof; and

(2) "Operating expenses" for the fiscal year means ordinary expenditures for operation and administration of the authority.

(d) The annual budget of the authority shall be prepared in accordance with title 9, chapter 6.

SECTION 7.

(a) All funds received, appropriated or otherwise coming under the control of the authority shall be deposited into the state treasury to the credit of the minority business development account created by this chapter.

(b) Funds in the account shall be used to pay all expenses and disbursements authorized by the authority including:

(1) Guaranty payments required by loan defaults; and

(2) Expenses for administration, legal, actuarial and other services.

(c) In guaranteeing or directly issuing loans under this chapter, consideration shall be given to:

- (1) Community need;
- (2) Geographic distribution; and
- (3) Community income, with priority given to those communities with the lowest median family income.

SECTION 8. Subject to the restrictions of this chapter, the authority, on application, may provide to the applicant a guarantee of a loan made to the applicant or may provide a direct loan to the applicant or, in cases of local education agencies and local governments, may provide a grant.

SECTION 9. The authority may guarantee a loan made to an applicant, issue a loan directly to an applicant, or issue a grant to an applicant local education agency or local government only if:

- (1) The applicant meets the qualifications required by this chapter;
- (2) The loan or grant is to be used to finance the creation, improvement, expansion or development of a minority business in a rural area; and
- (3) The documentation evidencing a loan guarantee or a direct loan clearly states that such guarantee or loan is an obligation of the authority and not of the state, and any amounts required to be paid pursuant to the loan guarantee are subject to the availability of sufficient funds of the authority.

SECTION 10.

(a) To apply for financial assistance, an applicant shall submit to the authority an application on the form that the authority requires.

(b) The application shall include:

- (1) A detailed description of the project;
- (2) An itemization of known and estimated costs;
- (3) The total amount of investment required to perform the contract;
- (4) The funds available to the applicant without assistance from the authority;

- (5) The amount of assistance sought from the authority;
- (6) Information that relates to the inability of the applicant to obtain adequate financing on reasonable terms through normal lending channels;
- (7) Information that relates to the financial status of the applicant, including, if applicable:
 - (i) A current audited balance sheet;
 - (ii) A profit and loss statement;
 - (iii) Credit references; and
- (8) Any other relevant information that the authority requests.

SECTION 11.

- (a) There is hereby created within the state treasury a restricted account to be known as the minority business development revolving loan fund account.
- (b) Amounts in the account at the end of any fiscal year shall not revert but shall remain available to the authority for the purposes set forth in this chapter.
- (c) Amounts in the account shall be invested for the benefit of the account by the treasurer pursuant to Section 9-4-603.
- (d) The account shall be administered by the authority.

SECTION 12. The authority is authorized to determine the total dollar amount of loans to be guaranteed, with a maximum of five (5) times the balance of appropriated funds, plus income, less expenses of the corporation.

SECTION 13. The authority is authorized to charge a premium to the borrower to help defray the cost of administering the program.

SECTION 14. The authority may contract with an appropriate organization to operate its programs under the provisions of this chapter.

SECTION 15. In order to ensure that as many communities as possible benefit from the program, individual direct loans and loan guarantees shall not exceed two hundred fifty thousand dollars (\$250,000).

SECTION 16.

(a) Except as provided in this chapter, the authority may set the terms and conditions for making grants, direct loans and guarantees of loans.

(b) The total aggregate amount of the loan guarantee may not exceed eighty percent (80%) of the loan.

SECTION 17.

(a) An individual or entity meeting the requirements of this chapter is authorized to make application to the authority for a loan guarantee, direct loan or grant pursuant to the provisions of this chapter.

(b) The authority shall review the application. If, after making such review, the authority determines that the applicant is eligible under the provisions of this chapter, and the rules promulgated pursuant thereto, the authority is authorized to approve a loan guarantee, direct loan or grant pursuant to the provisions of this chapter, and the rules promulgated pursuant thereto.

SECTION 18.

(a) The authority shall annually submit to the governor and the speakers of the senate and the house of representatives within ninety (90) days after the end of its fiscal year, a complete and detailed report setting forth its operation and accomplishments.

(b) The authority shall be subject to examination and audit by the comptroller of the treasury in the same manner as prescribed for departments and agencies of the state.

SECTION 19.

(a) The powers enumerated in this chapter shall be interpreted liberally to effectuate the purposes thereof and shall not be construed as a limitation of powers.

(b) To the extent that the provisions of this chapter are inconsistent with the provisions of any general statute or special act or parts thereof, the provisions of this chapter shall be deemed controlling.

SECTION 20. This act shall take effect on becoming a law, the public welfare requiring it.